

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

INDECK KEYSTONE
ENERGY, LLC, a Delaware limited liability
company,

Plaintiff,

v.

VICTORY ENERGY
OPERATIONS, LLC, a Delaware limited
liability company,

Defendant.

CIVIL ACTION

NO. 04-CV-325 (ERIE)

Judge Sean J. McLaughlin

**PLAINTIFF'S MOTION FOR PARTIAL
SUMMARY JUDGMENT ON DEFENDANT'S
COUNTERCLAIMS**

Plaintiff Indeck Keystone Energy, LLC (“IKE”), by and through its undersigned counsel, and pursuant to Federal Rule of Civil Procedure 56, hereby moves for partial summary judgment on Counts II through V of the Second Amended Counterclaim filed by Defendant, Victory Energy Operations, LLC (“VEO”). In support of its Motion, IKE states the following:

1. IKE commenced this action against VEO for trademark infringement, misappropriation of trade secrets, unfair competition and unjust enrichment.

2. In response to IKE's Complaint, *inter alia*, VEO attempted to set forth counterclaims for alleged breach of the exclusivity provision of the License Agreement (Count II), intentional interference with contractual relationships with third-parties (Count III), violation of the California Business and Professional Code (Count IV), and intentional interference with prospective economic advantage (Count V).

3. Despite extensive discovery, VEO has not obtained evidence sufficient to establish many of the elements that are essential to recovery on the foregoing counterclaims. To the extent that discovery has yielded evidence that is germane to VEO's counterclaims, such evidence affirmatively demonstrates that VEO is not entitled to any relief thereupon.

4. There are no genuine issues of any material fact upon which this Motion is based, and IKE is entitled to judgment in its favor on Counts II through V of VEO's Second Amended Counterclaim as a matter of law.

5. In support of its Motion, IKE incorporates by reference its Memorandum of Law, which is being filed contemporaneously herewith.

WHEREFORE, Plaintiff, Indeck Keystone Energy, LLC respectfully requests that this Honorable Court grant the within Motion and enter judgment in its favor and against Victory Energy Operations, LLC on Counts II through V, inclusive, of the Second Amended Counterclaim.

Respectfully submitted,

/s/ Robert J. Williams

John K. Gisleson (Pa. ID. No. 62511)
Robert J. Williams (Pa. ID. No. 76139)
SCHNADER HARRISON SEGAL & LEWIS LLP
Fifth Avenue Place
120 Fifth Avenue, Suite 2700
Pittsburgh, PA 15222-3001
Telephone: 412-577-5200
Facsimile: 412-765-3858

Gerald F. DeNotto
600 North Buffalo Grove Road, Suite 300
Buffalo Grove, IL 60089
Telephone: 847-520-3212
Facsimile: 847-520-3235

Attorneys for Plaintiff and Counterclaim Defendant,
Indeck Keystone Energy, LLC

Dated: March 6, 2006